

## CIVIL COVER SHEET

County in which action arose Washtenaw

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

FENF, LLC

**DEFENDANTS**

SMARTTHINGSZ, INC.

(b) County of Residence of First Listed Plaintiff Washtenaw County, MI

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Westchester County, NY

(IN U.S. PLAINTIFF CASES ONLY)

NOTE:

IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

Don Darnell P55268

7926 Ann Arbor St., Dexter, Michigan 48130

734-424-5200/ dondarnell@darnell-law.com

Attorneys (If Known)

**II. BASIS OF JURISDICTION**

(Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES**

(For Diversity Cases Only)

(Place an "X" in One Box for Plaintiff, and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                                   | DEF                                   |
|---|----------------------------|----------------------------|---|---------------------------------------|---------------------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input checked="" type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5            | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6            | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT**

(Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/ Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
			<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

**V. ORIGIN**

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

35 USC 281

Brief description of cause:

Patent Infringement of Patent No. 8,002,675

**VII. REQUESTED IN COMPLAINT:**
☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

1,750,000

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

October 25, 2012

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

☐ Yes

☒ No

If yes, give the following information:

Court: \_\_\_\_\_

Case No.: \_\_\_\_\_

Judge: \_\_\_\_\_

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

☐ Yes

☒ No

If yes, give the following information:

Court: \_\_\_\_\_

Case No.: \_\_\_\_\_

Judge: \_\_\_\_\_

Notes :

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
DETROIT

FenF, LLC,  
Plaintiff,

Case No.  
Hon.  
Mag.

-vs-

**Jury Demand**

SMARTTHINGZ, INC.  
Defendant.

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**COMPLAINT FOR PATENT INFRINGEMENT**

Now comes Plaintiff, FenF, LLC, by its counsel, Don Darnell, and for its complaint against Smartthingsz, Inc., states as follows:

1. Plaintiff FenF, LLC (FenF) is a Michigan limited liability company with its principal place of business in Dexter, State of Michigan.
2. Defendant Smartthingz, Inc., d/b/a "SmartThingZ" is a New York corporation with its principal place of business in New York, State of New York.

**Jurisdiction and Venue**

3. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has original jurisdiction of this action pursuant to 28 U.S.C. §§ 1331 and 1338 and 35 U.S.C. §281.
4. This Court has personal jurisdiction over SmartThingsZ. SmartThingsZ transacts business in Michigan, including but not limited to the sale of the accused product; SmartThingsZ has specifically directed its activities to Michigan; and acts of infringement have occurred in and beyond Michigan causing injury to FenF in Michigan.

5. The amount in controversy in this case exceeds \$75,000.00 exclusive of interest and costs.
6. Venue is proper in this judicial district under 29 U.S.C. § 1391(c) and 1400(b).

#### **Common Allegations**

7. FenF operates a successful product design, manufacturing, distributing and retail business that produces orthopedic health devices.
8. FenF has designed, manufactured and sold several different products over time to include a product called "YogaToes®."
9. Since its inception, FenF has continually analyzed the orthopedic needs of persons in order to create and sell innovative products.
10. FenF protects its investments in product research, development, and marketing with strong intellectual property safeguards like patents.
11. Accordingly, Plaintiff has obtained a United States Patent for a "Foot-Therapy and Toe-Aligning Device" on August 23, 2011, United States Patent No. 8,002,675 ("the '675 Patent") duly and legally issued to Frederic Ferri, as inventor, for the aforementioned orthopedic device to stretch and exercise the toes and feet, and since that date all rights to the '675 Patent, including but not limited to, the right to recover for infringement there under, has been assigned to FenF, LLC. A copy of the '675 Patent as issued is attached hereto as Exhibit A
12. All claims of the '675 patent are valid and enforceable.
13. At all relevant times subsequent to issuance of the '675 patent, Frederic Ferri and FenF,

LLC, together, or individually, have practiced under the exclusive rights conferred by the '675 patent and/or the patent upon which the '675 is a Continuation in Part of Patent No. 7,322,915, which is a division of, Patent No. 7,131,939, all of which are property of the Plaintiff.

14. At all times relevant since at least June 9, 2011, Defendant has advertised, offered for sale, and sold a product called "SmartToes" on its website at [www.smarthingsz.com](http://www.smarthingsz.com) and [www.amazon.com](http://www.amazon.com).
15. Promotional materials associated with SmartToes include the website, [www.smarthingsz.com](http://www.smarthingsz.com), videos, demonstrations, and articles. These materials have been available to individuals nationwide, including those located in this District, on the Internet.
16. In addition to selling the SmartToes device on its own website, Amazon.com, Beautiful Planet, Inc., and several sellers on eBay sell the SmartToes device online.
17. A true and accurate digital still image of the SmartToes device is attached hereto as Exhibit B.

**Count I**  
**(Patent Infringement)**

18. Paragraphs 1-18 above, inclusive, are incorporated herein by reference.
19. SmartThingsZ have directly infringed the '675 patent, and continue to so infringe, by making, offering to sell, selling, or using within the United States, articles covered by one or more of the claims of FenF's '675 patent.

20. On information and belief, since at least August of 2011, SmartThingsZ were either aware of the '675 patent or was willfully blind in order not to become aware of the '675 patent.
21. Defendant has infringed and is infringing the '675 Patent, making Defendant liable for direct and/or indirect infringement under 35 U.S.C. § 271, and 281-285.
22. FenF has suffered immediate and irreparable harm by SmartThingsZ's infringement conduct, and will continue to suffer said injury unless and until SmartThingsZ is enjoined from the infringing conduct.
23. SmartThingsZ's infringement conduct will continue unless immediately enjoined by the Court.

### **RELIEF REQUESTED**

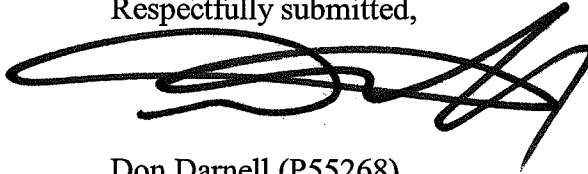
WHEREFORE, Plaintiff respectfully requests that this Court enter a judgment and order that:

- a. The '675 patent is valid and enforceable;
- b. SmartThingsz, Inc. have directly infringed FenF's '675 patent;
- c. SmartThingsz, Inc. have engaged in willful and deliberate infringement of the '675 patent;
- d. SmartThingsz, Inc. and its officers, agents, servants, representatives, employees and all others in concert or participation with them, directly or indirectly, be preliminarily and permanently enjoined from infringing, inducing others to infringe, or contributing to the infringement of the '675 patent pursuant to 35 U.S.C. § 284;
- e. SmartThingsz, Inc. be directed to fully compensate Plaintiff for all damages attributable to SmartThingsZ's infringement of the '675 patent in an amount according to proof at trial;
- f. Said damages be trebled;
- g. This case be deemed exceptional;
- h. Plaintiff be awarded reasonable attorneys' fees;
- i. Plaintiff be awarded reasonable expenses in this action, including the costs, fees,

- j. and expenses in accordance with 35 U.S.C. § 285; and  
Plaintiff be awarded such other and further relief as the circumstances of this case may require, and as the Court may deem just and proper.

October 26, 2012

Respectfully submitted,



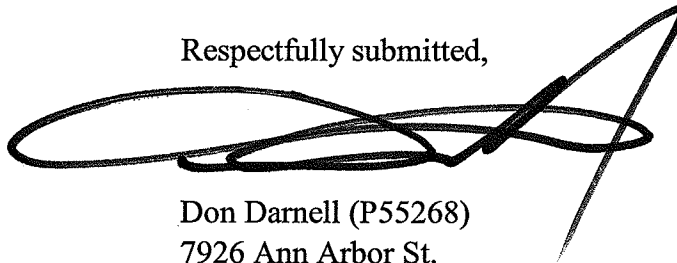
Don Darnell (P55268)  
7926 Ann Arbor St.  
Dexter, Michigan 48130  
734-242-5200  
dondarnell@darnell-law.com

**JURY DEMAND**

Plaintiff FenF, LLC hereby requests a trial by jury on all issues so triable.

October 26, 2012

Respectfully submitted,



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